

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

ALASKA COMMUNITY ACTION ON
TOXICS and ALASKA CHAPTER OF THE
SIERRA CLUB,

Plaintiffs,

vs.

AURORA ENERGY SERVICES, LLC and
ALASKA RAILROAD CORPORATION,

Defendants.

Case No. 3:09-cv-00255-TMB

**DECLARATION OF
LYNN J. TOMICH KENT**

I, Lynn J. Tomich Kent, declare as follows:

1. I serve as the Deputy Commissioner in the Alaska Department of Environmental Conservation (ADEC). I have oversight responsibilities regarding a variety of regulatory programs at ADEC, including the State's program for National Pollutant Discharge Elimination System (NPDES) (wastewater discharge) permitting and compliance under the Clean Water Act.
2. I have worked over 25 years in federal and state environmental and natural resource law and policy. Prior to assuming my current position in August 2011, I served as the Director of the Division of Water at ADEC for approximately six years. Before my tenure as Director of the Water Division, I served as program manager for several ADEC programs including the Water Quality Programs. NPDES permitting and compliance is part of the Water Quality Programs.

DECLARATION OF LYNN J TOMICH KENT

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3. ADEC currently administers the Alaska Pollutant Discharge Elimination System (APDES) permitting and compliance program, as authorized by the U.S. Environmental Protection Agency (EPA), and in lieu of the federal NPDES program under the Clean Water Act. The APDES program includes regulation of stormwater discharges from industrial facilities in the State of Alaska. Stormwater includes runoff and snowmelt that can carry contaminants from a facility to waters of the United States. ADEC assumed control over the stormwater NPDES permitting and compliance program from the EPA in October 2009.
4. While working for the Division of Water and tracking progress on the assumption of the permitting program, I became generally familiar with the Seward Coal Loading Facility (the “Seward Terminal”) located in Seward, Alaska through discussion with Division of Water staff and facility representatives. I also reviewed portions of the “Multi-Sector General Permit” (MSGP) NPDES permit that was issued by EPA and transferred to State control in October 2009. Discharges to waters of the United States from the Seward Terminal were authorized by EPA under the MSGP for stormwater prior to EPA transfer of the permit to ADEC control. The Seward Terminal includes coal storage areas (coal piles) awaiting shipment and a ship loader with a conveyor belt which extends out over Resurrection Bay, from which coal is loaded into ships for transport.

5. Division of Water personnel visited the Seward Terminal to conduct an inspection in February 2010 to observe conditions at the facility and in the area.
6. Under the Clean Water Act and the APDES program approved by EPA, ADEC has discretion as to how to permit discharges to waters of the United States from coal handling (including both storage and the conveyor/shiploader). ADEC can decide whether to authorize discharges under the terms of a general permit (a permit that covers multiple facilities) or an individual permit (a facility-specific permit).
7. ADEC generally does not regulate emissions to air under its Clean Water Act authority, although the MSGP (NPDES permit) for stormwater does contemplate that dust could reach a water of the United States and requires (at section 2.1.2.12) that facilities minimize dust generation. This and other best management practices are documented in the Seward Terminal's Stormwater Pollution Prevention Plan (SWPPP) prepared by Aurora Energy Services, LLC (AES). The SWPPP implements the MSGP and is an enforceable permit requirement.
8. The MSGP requires documentation in the SWPPP of potential pollutant sources, including material handling activities such as storage, loading, unloading, transportation and conveyance of materials. The SWPPP for the Seward Terminal specifically covers discharges of coal from the shiploader and conveyor over water. In Table 2, the SWPPP lists all "outfalls and

drainages” including “Area H” comprising the “conveyor over water and shiploader.” Under part 3.5, “Erosion and Sediment Controls,” the SWPPP includes the conveyor over Resurrection Bay and lists the controls that are required by the SWPPP (i.e., a cover, a belt scraper system, and proper maintenance).

9. The MSGP has afforded the permittee flexibility to adapt to conditions at the site. It is my understanding that, over time, the SWPPP has been amended to reflect AES and Alaska Railroad Corporation’s improvements in management practices for the facility.
10. Control measures and practices to address discharges of coal from the conveyor/shiploader can be implemented either as part of an NPDES/APDES general permit or individual permit. Neither of these permitting approaches would require zero discharge. Both would require implementation of reasonable measures designed to limit discharges of coal.
11. While I was Director of the Division of Water I did not believe that a separate NPDES/APDES permit (general or individual), aside from the MSGP, was required for coal discharges or fugitive dust emissions from the coal storage areas, equipment, or other locations at the Seward Terminal that may end up in waters of the United States, primarily because the current activities or facilities from which these discharges or emissions originate are regulated under the MSGP and described in the SWPPP.

Based on a recent review of portions of the MSGP, I still believe that, for

purposes of the NPDES/APDES program under the CWA, no other permit, other than the MSGP, is required.

12. I believe that requiring an individual NPDES/APDES permit, rather than the current coverage under the MSGP, would be duplicative and needlessly cumbersome (both for ADEC and the permittee) for this type of discharge, and would provide no additional environmental benefit or protection. It is my understanding that ADEC does not require, and has no current plans to require, a separate, individual NPDES/APDES permit for these discharges.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2012, in Juneau.


LYNN J. TOMICH KENT